

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1385 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B.G. SISODIYA

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR RAVI R TRIPATHI for Petitioner

MR MUKESH PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:6.9.96

C.A.V. JUDGMENT

Heard learned counsel for the parties. The petitioner, a Police Inspector (P.I.) working under Inspector General of Police, Government of Gujarat, filed this Special Civil Application wherein grievance has been made that he has illegally been superseded on 10th May

1976, when his juniors were given promotion to the post of P.I.s. Subsequently the petitioner has also been promoted to this post and by this Special Civil Application he is praying for giving him deemed date of promotion to the post of P.I. with effect from 10.5.1976 with all consequential benefits.

2. First of all, this Special Civil Application suffers from the defect of delay in filing of the same. The promotions have been made on 10th May 1976. The petitioner, immediately after the promotion of his juniors, has not made any grievance against his supersession. He was promoted to the post of P.I. on 3.12.1980 and at that stage also, the petitioner had not made any grievance to give him deemed date of promotion. He made the representation in this regard only on 20th September 1982 when the seniority list was published. Naturally, in that seniority list, the persons, though junior to the petitioner in the cadre of P.S.I., who have been promoted prior to the petitioner to the post of P.I., have been shown senior to him, and rightly so. Normally, after admission of the petition, delay may not be considered fatal, but where by this delay, rights being accrued to the juniors in the seniority as well as future promotions and in case on the basis of the decision same are likely to be affected, then such delay has to be taken seriously. Apart from this, in case, the petitioner's request for deemed date of promotion is accepted, then he will get seniority also above those persons who are shown senior to him in the seniority list. The petitioner has not challenged their promotions and has also not impleaded them as parties to this Special Civil Application. If the prayer made by petitioner is granted, then he will be given seniority without hearing other persons who have been already given seniority above the petitioner. This Court will not undo the settled things merely because the petitioner chose to raise objection after six years of his supersession and preferred this petition after eight years of his supersession, more so, when the persons who have been given seniority above the petitioners are likely to be affected by a decision given in this case in favour of the petitioner.

3. There is yet another reason which justifies dismissal of this Special Civil Application. In the reply filed to this Special Civil Application, the respondents have come up with the case that the petitioner was superseded for the reason that there were adverse remarks in his Annual Confidential and Character Role Report of the year 1971-72, 1974-75 and 1975-76.

4. The affidavit-in-rejoinder has been filed by the petitioner and the learned counsel for the petitioner has raised a point that the adverse remarks for the year 1971-72 have been communicated to the petitioner by the respondent after considerable delay. His representation against the said remarks for the year 1971 has also not been decided yet. The remarks for the year 1974-75 and 1975-76 were not adverse. It is true that the assessment of work of the petitioner for these two years was graded to be fair, but these remarks cannot be considered to be adverse remarks.

5. Merely on the ground that the remarks for the year 1974-75 and 1975-76 cannot be considered adverse remarks, the petitioner will not get any relief from this Court. The petitioner was holding the post of P.I. when he filed this Special Civil Application. Admittedly, the petitioner was communicated with adverse remarks for the year 1970-71, and also for the years 1974-75 and 1975-76, though they may not be adverse remarks. But despite of these admitted facts, the petitioner has concealed the same from this Court. The petitioner has come up before this Court with the averments that he has blotless service record, which is factually incorrect. Concealment of this material fact is fatal to this Special Civil Application. The conduct of the petitioner to conceal the relevant material facts has to be viewed seriously, as he was holding the post of P.I. at the relevant time. Whosoever approaches this Court under Article 226 of the Constitution of India, should come before this Court with all fairness and all the facts related to the controversy should be candidly disclosed before this Court. It is not the case where the petitioner has concealed the relevant facts only, but on the contrary he has made a deliberate wrong statement of fact that he possessed unblemished service record, in the Special Civil Application. Thus, this writ petition also deserves to be dismissed on the ground of concealment of material facts before this Court.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. The petitioner is directed to pay Rs.1,000/- by way of costs of this petition to the respondent-State and the respondent-State is directed to deposit this amount of costs paid by the petitioner in the Police Welfare Fund.

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(sunil)